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Central Administrative Tribunal, Principal Bench

O.A. No. 985/95

New Delhi this the 8th day of September, 99

Hon'ble Shri S.R. Adige, Vice Chairman
Hon'ble Shri Kuldip Singh, Member (J)

Ex Head Constable Brahm Kumar No. 104/C,
(Delhi Police)

s/o Shri Ramji Lal,
Village Nehar Khera,
Post Office Khanpur,
Police Station Mandawar,
Distt. Alwar, Rajasthan,
C/o Mrs. Avnish Ahlawat, Advocate,
Delhi High Court, New Delhi.

...Applicant

(By Advocate: Ms Vibha Mahajan proxy for Mrs. Avnish Ahlawat)

Versus

1. Government of National Capital
Territory of Delhi through
Commissioner of Police, Delhi,
Police Headquarters, MSO Building,
I.P. Estate, New Delhi.

2. Additional Commissioner of Police,
Northern Range, Delhi Police,
C/o Police Headquarters, MSO Building,
I.P. Estate, New Delhi.

3. Additional Deputy Commissioner of Police,
Central District,
Delhi Police, Darya Ganj,
New Delhi.

...Respondents

(By Advocate: Shri S.K. Gupta proxy for Sh. B.S. Gupta)

O R D E R (ORAL)

By Hon'ble Shri S.R. Adige, Vice Chairman (A)

Applicant impugns the disciplinary authority's order dated 29.7.1993 (Annexure-B) dismissing him from service for unauthorised absence from duty, and the appellate authority's order dated 17.5.1994 (Annexure-C).

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2. Applicant was proceeded against departmentally on the ground that while he was detailed for duty on 30.2.1992 he did not turn up and as such was marked absent on 1.4.1992, ~~And~~ absentee notice was sent at this permanent home address on 13.4.1992 with the directions to report for duty, but he failed to do so. He was also found to be a habitual absentee as he had absented himself unauthorisedly as many as on 13 occasions in the past which had already been decided. Furthermore, three other incidents of his unauthorised absence from duty were mentioned in the imputation of allegations.

3. The Enquiry Officer held the charge against the applicant proved and a copy of the enquiry report was furnished to the applicant for representation, if any. Applicant did not submit any representation.

4. The disciplinary authority after going through the material on record and agreeing with the findings of the enquiry officer, by the impugned order dated 29.7.1993 dismissed the applicant from service and directed that the absentee period on four occasions, as mentioned in para 2 of the order, be treated as leave without pay, against which applicant's appeal was dismissed by impugned order dated 17.5.1994.

5. We have heard Ms Vibha Mahajan proxy for Mrs. Avnish Ahlawat, counsel for applicant and Shri S.K. Gupta, proxy for Shri B.S.Gupta, counsel for respondents.

6. Ms Vibha Mahajan has taken various grounds, the most important of which is that the period of unauthorised absence having been treated as leave without pay by the disciplinary authority, the charge of unauthorised absence did not survive, and hence the impugned orders required to be


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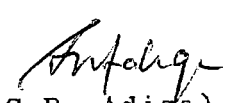
quashed and set aside. In this connection she relied upon the judgement of Hon'ble Supreme Court in State of Punjab Vs. Bakshish Singh [JT 1998(7) 142] as well as the judgement of the Delhi High Court in S.P. Yadav s. Union of India [71(1998) Delhi Law Times 681], wherein it has been held that unauthorised absence from duty having been regularised by treating the period of unauthorised absence as leave without pay, the charge of misconduct did not survive.

7. In the present case also in view of the fact that the concerned authorities have treated the period of unauthorised absence as leave without pay, the ratio of the aforesaid two judgements will be fully applicable, and the impugned orders, therefore, cannot be sustained in law.

8. The O.A., therefore, succeeds and is allowed to the extent that the impugned order of the disciplinary authority dated 29.7.1993 as well as appellate order dated 17.5.1994 are quashed and set aside. Respondents are directed to reinstate the applicant within two months from the date of receipt of a copy of this order. The intervening period between the date of applicant's dismissal and the date of his re-instatement, as well as such consequential benefits which will accrue to him upon his reinstatement will be regulated by respondents in accordance with rules, instructions and judicial pronouncements on the subject. No costs.


(Kuldip Singh)
Member (J)

Naresh


(S.R. Adige)
Vice Chairman(A)